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April 26, 2023

VIA ECF

Honorable Marcia M. Henry
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

**Re: Kellner v. City of New York, et al.
Docket No. 17-cv-01268 (NRM) (MMH)**

Dear Judge Henry:

I represent Plaintiff in the above matter and write in respect of an issue that may require the Court's assistance in connection with the upcoming deposition of Mr. Dowd.

By way of background, on March 31, 2023, further to the Court's Order dated March 23, 2023, the parties agreed to take Mr. Dowd's deposition today at 10 a.m. I spoke with Mr. Dowd later that day, and he informed me that he had been released from the rehabilitation facility noted in the Order (following his spine surgery on March 7) a few days earlier and that he expected to be available on April 26. On April 21, opposing counsel asked me to confirm the deposition. I spoke again to Mr. Dowd, who realized he had overlooked a (remote) court appearance in a set of New York Child Victims Act cases on the morning of April 26, and asked whether his deposition could take place the following day instead. I advised opposing counsel accordingly by email on April 21 but received no response to Mr. Dowd's request. I also travelled to Mr. Dowd's home on April 24, where he told me that, while his recovery is progressing, he is unable to sit for a deposition beyond a few hours a day and he undergoes physical therapy each day around noon and has to rest afterwards. He indicated that he would be available for his deposition today at 3 p.m. and in the morning or afternoon of April 27 and the afternoon of April 28. Again, I advised opposing counsel accordingly and suggested we conduct two to three hours of Mr. Dowd's deposition today and complete it (if necessary) on April 27 or April 28. Again, opposing counsel did not respond to my email. Yesterday morning, I received an email from opposing counsel that she intended to proceed with the deposition today at 10 a.m. I responded by reiterating the information I received from Mr. Dowd, including his conflict at 10 a.m., and suggested that we confer by phone in an

effort to resolve the issue as required by Local Rule 37.3, asking for a time that opposing counsel would be available to do so. Yet again, I received no response.

In these circumstances, although I am at a loss to explain the non-responsiveness of opposing counsel, or Defendants' position, it seems appropriate to alert the Court in advance to the extent the parties remain unable to resolve this issue. I have also enclosed the parties' email correspondence.

I thank the Court for its attention to this matter.

Respectfully,

Niall MacGiollabhuí
Niall MacGiollabhuí

Encl.

cc: Susan P. Scharfstein, Esq.